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RECENT CASES.

ACTION TO ANNUL MARRIAGE—PHYSICAL EXAMINATION OF HUSBAND.—ANONYMOUS, 69 N. Y. Supp. 547.—This is a motion to compel the defendant to submit to a physical examination before trial. The action is brought by a wife to annul her marriage for fraud in that defendant represented himself to be in good health, when in fact he was sick with a venereal disease. Motion denied.

If necessary a physical examination, in this case, is permissible at the proper time. *McQuigan v. Railroad Co.*, 127 N. Y. 50; *People v. Roosa*, 60 N. Y. Supp. 244. An examination of this nature is only granted because of absolute necessity where all other means of proof have failed. As the plaintiff did not make it appear that an examination was absolutely necessary and that she could not establish her case in any other way, the motion was rightly denied.

ADVERSE POSSESSION—PUBLIC STREETS.—*VILLAGE OF RED JACKET v. PINTON*, 85 N. W. 567 (Mich.).—Defendant built a fence around his premises and enclosed therewith a certain portion of public street. In 1890, after an undisturbed possession of 23 years, he erected a building which extended over portion of street thus enclosed. The building was destroyed by fire, and this action is brought to enjoin defendant from re-building. *Held*, the defendant's possession was not adverse as to street, since there was an implied understanding between city authorities and abutter, that upon re-building the correct line would be recognized.

The only evidence to support this conclusion was that the defendant, in 1893, six years after prescriptive period had expired, recognized the street line in constructing other buildings. The court shows a decided tendency to seize upon all available means to avoid the rule laid down in *Big Rapids v. Comstock*, 65 Mich. 75, that an individual may acquire title to public street by adverse possession. This would indicate a leaning towards the contrary doctrine, which is supported by the weight of authority. *Dillon Mun. Corp.* Sec. 669, and cases cited.

BANKRUPTCY—APPEAL FROM ALLOWANCE OF CLAIMS—RIGHT OF CREDITORS TO APPEAL.—*MCDANIEL ET AL v. STROUD*, 106 Fed. 486.—An appeal, by creditors, from an order of a bankruptcy court, after the refusal of the trustee to allow the use of his name as taking the appeal should not be dismissed, provided the creditors had no time in which to procure an order requiring such trustee to consent. Purnell, J., dissenting.

The general rule is that any party or person injured by any judgment or decree has the right of appeal therefrom. The determination of the point here at issue depends upon the construction of the revised bankruptcy act of 1898. In *Chatfield v. O'Dwyer*, 101 Fed. 797, it was held that under the bankruptcy

act of 1898 an appeal could be taken only by the trustee or by a creditor in the name of the trustee and under permission from the court. The present case takes the contrary view, following *in re Roche*, 101 Fed. 956.

COMMON CARRIERS—DEFECTIVE FREIGHT ELEVATOR—LANDLORD'S LIABILITY.—*SPRINGER v. FORD*, 59 N. E. Rep. 953 (Ill.).—The owner of a building in which a freight elevator is operated, who permits an employee of his tenant to ride thereon in the discharge of his duties, occupies the relation of a common carrier of passengers for hire towards such employees.

The conflict of the decisions on the *status* of passenger and freight elevators, has been decidedly emphasized during the last few months by two notable decisions taking opposite views on the subject. Upon the heels of the case of *Griffen v. Manice*, decided by the New York Court of Appeals and commented upon in the current volume of this Journal, page 287, comes this case which holds the owner of a building in which a freight elevator is operated, liable as a common carrier for hire; the hire being the rent received from the tenant. The New York case, on the contrary, considers such occupation as inadequate to create the relation of carrier and passengers, and makes the passenger, when using the elevator, merely accept an implied invitation to make use of it, when doing business on the premises. Both cases are decided on grounds of what the courts consider public policy, but the weight of prior decisions seems to be decidedly in favor of the Illinois decision. *Deposit Co. v. Soblitt*, 172 Ill. 222; *Treadwell v. Whittier*, 80 Cal. 574.

DISTRIBUTION OF POWERS OF STATE—PROBATE COURT—JURISDICTION—CONSTITUTIONAL LAW—*CITY OF JANESVILLE v. TELEGRAPH CO.*, 59 N. E. 781 (Ohio.).—A law conferring power on the Probate Court to determine the mode of construction of telegraph line along city streets, in case of disagreement between the city and company, is not invalid as vesting legislative powers in a judicial body. Shanck, C. J., and Marshall, J., dissenting.

In a carefully considered opinion the court here squarely reverses its former position, noted 10 YALE LAW JOURNAL 259. The defendant relied upon *Appeal of Norwalk Ry. Co.*, 69 Conn. 576, in which a similar statute was declared unconstitutional, but the court, after an exhaustive review, declines to accept it as binding, following the principle laid down in *Cooper's Case*, 22 N. Y. 84, that when any power is conferred upon a court of justice to be exercised by it as a court, the action of such court is to be regarded as judicial irrespective of the original nature of the power.

ELECTRICITY—NEGLIGENCE—TELEPHONES—DEATH BY LIGHTNING—SAFETY APPLIANCES—DANGEROUS POSITION.—*GRIFFITH v. NEW ENGLAND TELEPHONE AND TELEGRAPH CO.*, 380 Atl. 643 (Vt.).—A., while sitting in his library near a telephone which he had rented of defendant, was killed by lightning which entered over defendant's wires. *Held*, that the question as to whether defendant used proper appliance to avert the danger, and the question of A.'s contributory negligence in not knowing that defendant had not adopted proper appliances to avert such a danger and in sitting near the telephone when a storm was approaching, were for the jury.

It is the duty of electric companies to guard against injuries to person and property by reason of electricity which may be conducted over their lines. *Brown v. Illuminating Co.*, 45 Atl. 182; *McKay v. Telephone Co.*, 111 Ala. 337; 10 *Am. and Eng. Enc. Law* (second edition) 872. The court intimated that it is the duty of a telephone company to have a lightning arrester or a ground connection on the wire outside each subscriber's house or place of business.